

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Annual Report and Analysis of Competitive	)	WT Docket No. 05-71
Market Conditions With Respect to	)	
Commercial Mobile Services	)	

To:   The Commission

**REPLY COMMENTS OF  
DOBSON COMMUNICATIONS CORPORATION**

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April 12, 2005

## SUMMARY

The Commission's market-oriented policies continue to foster effective competition in the CMRS marketplace with consumers in both urban and rural areas benefiting from comparably low prices and increased service offerings. Dobson Communications Corporation ("Dobson") remains at the forefront of serving rural America through investments in network upgrades and an expanded coverage area that enables the delivery of innovative digital services to its rural constituency. Dobson's advanced technological capabilities have also made Dobson an attractive roaming partner for national carriers utilizing similar technologies, which, in turn, allows Dobson to provide consumers with competitive regional and nationwide service plans.

While competition continues to flourish, certain rural commenters complain that (i) changes in the marketplace are decreasing the roaming revenues upon which they rely; (ii) the transition from analog is impeding their ability to compete; and (iii) "keep what you use" licensing is needed to provided them with access to spectrum as they are not able to effectively compete against larger carriers at auction. Dobson disagrees with their pessimistic assessment of the competitive state of the wireless marketplace and opposes the imposition of heavy-handed regulation to remedy alleged market failures that have not been demonstrated.

Competition for roaming rates drives down the costs for roaming, resulting in lower rates for service for consumers. This is not anti-competitive conduct or a market failure but the direct result of the competition that the Commission seeks to foster. As the number of licensed carriers has increased and coverage footprints have expanded, the demand for roaming has inevitably decreased; and the number of carriers in a market competing for roaming revenue has increased, resulting in reduced roaming rates. Once profitable business models that rely on roaming revenues to cross-subsidize the costs of providing local service are simply no longer viable. Dobson has recognized the industry-wide decline in roaming revenues and adopted technological upgrades that make it an attractive roaming partner. If carriers need a subsidy to provide local service in high cost areas, then the Commission should ensure streamlined access to universal service funds instead of providing an implicit subsidy in the form of regulatory leverage for higher roaming rates.

Moreover, the Commission should not revisit its decision to phase out the analog service requirement for cellular licensees. Even as Dobson maintains analog service in accordance with the Commission's rules, Dobson recognizes that the consumer benefits of analog pale in comparison to the benefits provided by digital services. A carrier cannot expect to be competitive by relying on outdated technology, even if the costs for upgrades are substantial. Finally, "keep what you use" licensing will not benefit rural consumers, as it encourages premature, uneconomic construction of network facilities. Instead of creating viable new competition for rural consumers, such premature construction threatens to create market failure in rural areas by introducing uneconomic competition into the marketplace.

## TABLE OF CONTENTS

I.	Dobson Has Been At The Forefront Of Bringing Expanded Coverage And Advanced Wireless Services To Rural America .....	2
II.	The Commission’s Conclusion That Rural America Enjoys Competitive Wireless Services Is Fully Supported In The Record.....	3
III.	Competition Among Local Carriers For Roaming Use Benefits Consumers.....	5
IV.	The Existence Of Effective Competition Is The Real Source Of The Rural Commenters’ Complaint About The Analog Transition. ....	10
V.	Contrary To The Claims of Some Rural Commenters, A “Keep What You Use” Licensing Policy Would Have Significant Adverse Consequences For The CMRS Industry.....	12
	Conclusion.....	13

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Dobson Communications Corporation (“Dobson”) hereby replies to comments filed by several rural telecommunications carriers<sup>1</sup> in response to the Commission’s Public Notice in the above-captioned proceeding.<sup>2</sup> Dobson disagrees with the Rural Commenters’ pessimistic assessment of the competitive state of the wireless marketplace in rural areas and opposes their proposals for the imposition of heavy-handed regulation to remedy alleged market failures. To the contrary, as the Commission recently concluded, its current market-oriented policies “have resulted in the widespread provision of wireless services, including in rural areas, and largely have been successful in promoting facilities-based competition in the rural marketplace, especially with respect to CMRS.”<sup>3</sup> Adoption of the Rural Commenters’ proposals for increased

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<sup>1</sup> See Comments of Mid-Tex Cellular, Ltd., WT Docket No. 05-71 (filed Mar. 28, 2005) (“Mid-Tex Comments”); Comments of Arctic Slope Telephone Association Cooperative, Inc., WT Docket No. 05-71 (filed Mar. 28, 2005) (“Arctic Slope Comments”); Comments of Leaco Rural Telephone Cooperative, Inc., WT Docket No. 05-71 (filed Mar. 28, 2005) (“Leaco Comments”); Comments of Public Service Communications, WT Docket No. 05-71 (filed Mar. 28, 2005) (“PSComm Comments”); Comments of Great Lakes of Iowa, Inc., WT Docket No. 05-71 (filed Mar. 28, 2005) (“Great Lakes Comments”); Comments of National Telecommunications Cooperative Association, WT Docket No. 05-71 (filed Mar. 28, 2005) (“NTCA Comments”) (collectively the “Rural Commenters”).

<sup>2</sup> Public Notice, “WTB Seeks Comment on CMRS Market Competition,” DA 05-487 (rel. Feb. 24, 2005).

<sup>3</sup> *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services*, WT Docket No. 02-381, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 19078, ¶ 6 (2004).

regulation<sup>4</sup> to protect out-dated business models would only serve to diminish competition in rural areas, slow down or even stop the introduction of advanced digital services in rural areas, and result in higher prices for rural and other consumers alike.

**I. Dobson Has Been At The Forefront Of Bringing Expanded Coverage And Advanced Wireless Services To Rural America.**

Dobson has a significant interest in issues involving rural telecommunications, having begun as a family-owned rural telephone company in the 1930s with a single exchange in Western Oklahoma. Dobson has rapidly expanded its wireless operations and currently owns or manages wireless networks in sixteen states, from Alaska to New York, with approximately 1.6 million customers covering a total population over 11.8 million as of December 31, 2004.<sup>5</sup> While Dobson's wireless networks include low-density ex-urban and suburban areas and a handful of smaller cities, approximately 85 percent of its coverage falls within areas that the Commission considers "rural." Dobson coverage provides advanced, digital mobile telecommunications services to more than 98 percent of the population in its licensed areas.

Dobson understands rural America and has focused its efforts on assuring that its rural subscribers have access to the same technology and services that are available in urban markets. Dobson was one of the first carriers to install digital technology in 100 percent of its markets,

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<sup>4</sup> It must be noted that this proceeding is not a rulemaking and is limited to gathering data and information to evaluate the current state of competition among CMRS providers. The instant proceeding is therefore not the appropriate venue to address many of the concerns raised by the Rural Commenters. Moreover, the concerns raised have either already been addressed by the Commission or are the subject of a pending rulemaking proceeding. For example, the Rural Commenters claim that national carriers are discriminating against them by offering roaming agreements to larger competitors at more favorable terms and conditions in violation of Section 202(a) of the Act. A rulemaking proceeding remains pending that addresses the subject of automatic and manual roaming. Similarly, the Rural Commenters advocate a "use it or lose it" licensing approach to force carriers to relinquish spectrum in rural areas that they purchased at auction but have not yet found economic to build out. The Commission has just concluded a pleading cycle on this very proposal in WT Docket No. 02-381. Also, the Rural Commenters state that the phasing out of analog service harms their ability to compete. The Commission has already ruled that the analog service requirement will sunset in 2008 and affirmed this decision on reconsideration last year.

<sup>5</sup> Dobson operates wireless telecommunications systems through its wholly-owned subsidiaries Dobson Cellular Systems, Inc. and American Cellular Corporation and their subsidiary licensees.

and Dobson is one of the earliest adapters to GSM technology, which it now provides in virtually all of its licensed areas.

## **II. The Commission's Conclusion That Rural America Enjoys Competitive Wireless Services Is Fully Supported In The Record.**

In each of its last two annual reports on the state of competition in the wireless industry, the Commission has concluded that effective competition exists in the CMRS marketplace, including rural areas, finding that the total U.S. population with access to multiple mobile telephone providers continues to increase each year.<sup>6</sup> A key driver for the effective CMRS competition found in rural areas has been a regulatory environment free of excessive government intervention, allowing marketplace forces to spur development. As a result, the Commission's data indicates that rural consumers typically have a choice of three to five facilities-based carriers,<sup>7</sup> of which at least one, if not two or more, are national or large regional players. In addition, secondary market initiatives as well as spectrum partitioning and disaggregation policies have proven to be efficient, market-oriented tools in making sure that spectrum is available for use by those with effective business plans to use it.<sup>8</sup>

Dobson recently conducted an informal study using information available on the Internet websites of various nationwide telecommunications carriers that confirms that wireless calling plan prices are extremely competitive throughout the nation, and that available pricing plans in

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<sup>6</sup> *Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, WT Docket No. 04-111, *Ninth Report*, 19 FCC Rcd 20597, 20600, 20610 (2004) ("*Ninth Report*"); *Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, WT Docket No. 02-379, *Eighth Report*, 18 FCC Rcd 14783, 14793-94, 14877 (2003) ("*Eighth Report*").

<sup>7</sup> See *Ninth Report*, 19 FCC Rcd at 20643.

<sup>8</sup> Dobson has made significant use of spectrum leasing and partitioning and disaggregation to expand its service footprints. And Dobson is not alone among rural carriers who have seen the benefits of these market-oriented policies to position themselves to be able to provide advanced wireless services to their rural markets. See, e.g., Comments of United Wireless Corporation, WT Docket No. 05-63 (filed Apr. 1, 2005); Nex-Tech Wireless Corporation, WT Docket No. 05-63 (Mar. 30, 2005); Pioneer Telephone Cooperative, Inc., WT Docket No. 05-63 (Mar. 30, 2005).

rural markets are generally comparable to those in urban areas. Specifically, Dobson compared typical rates for “bucket of minutes” rate plans charged by the national carriers to subscribers in large East Coast and West Coast cities to rates charged by Dobson in rural Oklahoma:

#### **URBAN VS. RURAL NATIONWIDE RATE PLANS<sup>9</sup>**

	<b>Cingular</b>	<b>Nextel</b>	<b>Verizon</b>	<b>Dobson d/b/a Cellular One</b>
<b>City/Town</b>	<i>Washington</i>	<i>New York City</i>	<i>San Francisco</i>	<i>Fairland, OK<sup>10</sup></i>
<b>Population</b>	572,059	8,008,278	776,733	1,025
<b>Cost per minute (approx. \$40 rate plan)<sup>11</sup></b>	.089	.092	.089	.089
<b>Cost per minute (approx. \$60 rate plan)<sup>12</sup></b>	.067	.070	.067	.067

But the competitive analysis is not limited to pricing. Not unlike improvements made by the nationwide carriers in facilities and services available to subscribers, Dobson is constantly improving, upgrading and advancing wireless technologies for its largely rural constituency. For example, in the past year, Dobson has:

- Invested significant capital expenditures to complete its GSM/GPRS/Enhanced Data Rates for GSM Evolution (“EDGE”) overlay throughout its networks nationwide, which includes a wireless footprint that covers 91 percent of Alaska’s population.<sup>13</sup>
- Completed the acquisition of a GSM network and licenses covering rural areas in northern Michigan. Dobson plans to expand its coverage in these rural markets

<sup>9</sup> For rate information, see [www.cingular.com](http://www.cingular.com) (viewed April 5, 2005) (Washington, DC (zip code 20037)); [www.nextel.com](http://www.nextel.com) (viewed April 6, 2005) (New York, NY (zip code 10016)); [www.verizonwireless.com](http://www.verizonwireless.com) (viewed April 5, 2005) (San Francisco, CA (zip code 94103)); [www.celloneusa.com](http://www.celloneusa.com) (viewed April 5, 2005) (Fairland, OK (zip code 74343)). Population data is based on the 2000 Census data.

<sup>10</sup> Fairland, Oklahoma is located in a rural area with the largest nearby population centers being Joplin, Missouri (30 miles away) and Tulsa, Oklahoma (over 75 miles away).

<sup>11</sup> Cost is based on per minute analysis of the anytime minutes for a national plan (*i.e.*, \$30.00 plan for 300 minutes equals \$0.10 per minute); most plans also included unlimited nights and weekend minutes.

<sup>12</sup> See *id.*

<sup>13</sup> See News Release, “Dobson Communications Reports Second Quarter 2004 Results” (rel. Aug. 9, 2004) (found at [www.dobson.net](http://www.dobson.net)).

while upgrading the quality of this network through the addition of GPRS data service functionality.<sup>14</sup>

- Entered into an agreement with BlackBerry® to provide wireless internet access, SMS and other high-speed data capabilities to its customers. BlackBerry will operate utilizing Dobson's advanced GSM/GPRS network, in another example of Dobson's proactive approach in providing a myriad of advanced solutions.<sup>15</sup>
- Purchased broadband software-defined base stations from Alcatel, which are part of a solution in Michigan that will use GSM frequencies. The solution is designed to provide a more reliable and more economical mobile broadband access solution in rural and highway areas.<sup>16</sup>

While the deployment of these technologies has required significant investment, in a highly competitive marketplace such investments are necessary to win over and retain customers seeking the most advanced service offerings. Dobson's proactive initiatives have been driven by its realization that the marketplace in its rural markets is competitive, providing real opportunities for consumers to migrate to another carrier at any time. The rural market has reached this competitive state through the types of market-driven policies that the Commission has adopted for the wireless industry as a whole. The Commission would stymie continued investment, expansion and technological advancements in rural areas by adopting the heavy-handed regulatory policies proposed by many of the Rural Commenters.

### **III. Competition Among Local Carriers For Roaming Use Benefits Consumers.**

In an effort to suggest that competition for subscribers does not exist in rural markets, the Rural Commenters, in particular Mid-Tex and Arctic Slope, complain that the national carriers are using their leverage to drive down the roaming rates they will pay to rural carriers when the

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<sup>14</sup> See *News Release*, "Dobson Communications Completes Acquisition of Properties in Northern Michigan" (rel. June 16, 2004) (found at [www.dobson.net](http://www.dobson.net)).

<sup>15</sup> See *Press Release*, "Dobson Communications to Offer BlackBerry® In the United States" (rel. Nov. 9, 2004) (available at [http://biz.yahoo.com/bw/041109/95216\\_1.html](http://biz.yahoo.com/bw/041109/95216_1.html)).

<sup>16</sup> See RCR Breaking News, "Dobson Orders Broadband Base Stations From Alcatel" (rel. June 30, 2004).



national carriers' subscribers are roaming in rural areas. The Rural Commenters argue that this threatens the roaming revenues upon which they rely. Contrary to their suggestion that this is anticompetitive conduct, the competition among local carriers for roaming minutes – and the potential that the nationwide carriers will either work with a competitor or instead build their own facilities-based network to serve these rural areas – is the result of the competition that the Commission has fostered and should seek to foster for the future. To the significant benefit of consumers, the marketplace has evolved with the availability of PCS and ESMR spectrum so that business models based on extracting high roaming rates from carriers (who must then pass them on to the roaming public) are no longer viable.<sup>17</sup> The Rural Commenters may be struggling to adapt to the changing marketplace; but any Commission policy that would encourage smaller carriers to charge higher roaming rates – the proverbial “toll at the bridge” approach – can only result in increased roaming costs that will be passed on to consumers in the form of increased rates for services, the very antithesis of the Commission's intended pro-consumer policies.

Dobson recognized some time ago that competitive pressures in rural markets could drive down the roaming revenues it might enjoy from other carriers. As spectrum was licensed that allowed larger carriers to expand their footprints, the demand for roaming decreased; and the number of carriers competing for roaming rates in a given market increased.<sup>18</sup> This was a driving force in Dobson's business decision to move away from a dependence on roaming

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<sup>17</sup> It is noteworthy that none of the Rural Commenters is suggesting that the national carriers are demanding unduly high rates from the rural carriers when the rural carriers' subscribers roam outside their territories, but only that the national carriers are requiring, as a condition for such agreements, that the rural carriers agree to accept roaming fees lower than the rural carriers would prefer to charge when the larger carriers' customers roam into rural areas.

<sup>18</sup> See *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Sixth Report*, 16 FCC Rcd 13350, 13379 (2001) (“Roaming rates have been declining, continuing the trend described in the *Fifth Report*. . . [U.S. Cellular] expects the downward trend to continue as new wireless operators begin service in the company's markets, and its roaming partners are able to switch their business to these new operators. . . . CTIA attributes this to ‘increasingly large footprints of each carrier and wireless companies treating many calls as local, instead of roaming.’”).

revenues and instead to provide its local subscribers the advanced wireless services that would increase Dobson's local market penetration and provide higher per-local-subscriber revenues. Although still significant, roaming revenue made up only twenty percent of Dobson's total operating revenues as of December 31, 2004.<sup>19</sup>

No less importantly, Dobson's experience shows that allowing carriers to freely negotiate roaming rates motivates small and mid-sized rural carriers to expand and upgrade their network service offerings to the benefit of consumers. For example, the availability of an advanced platform for other carriers' roaming traffic has allowed Dobson to provide an attractive roaming alternative for the national carriers to utilize in serving their subscribers' needs when they are traveling in Dobson's market areas. By doing so, Dobson has achieved the ability to negotiate reasonable roaming rates with nationwide and regional carriers utilizing similar technologies. To the extent that Dobson's investment in its home markets makes it a more attractive candidate for a favorable roaming arrangement, it is Dobson's response to the competitive CMRS marketplace that has driven these results.

Dobson has entered into strategic roaming agreements not only with national carriers but also with several of the Rural Commenters.<sup>20</sup> Rural Commenters, such as Mid-Tex, mischaracterize Dobson's response to competition and the industry-wide decline in roaming revenues as anti-competitive conduct because they do not have the breadth of coverage and advanced services that Dobson can offer its roaming partners. If a carrier does not provide the

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<sup>19</sup> Dobson Communications Corporation, 10-K Annual Report (filed Mar. 16, 2005) ("Dobson Annual 10-K").

<sup>20</sup> Dobson is a party to GSM/GPRS/EDGE and TDMA roaming and operating agreements with both Cingular Wireless and AT&T Wireless, which now is a wholly-owned subsidiary of Cingular Wireless. The agreement with Cingular Wireless expires on December 31, 2011. The roaming agreement with AT&T Wireless for TDMA expires in February 2020, and the roaming agreement for GSM/GPRS/EDGE expires in July 2008. *See* Dobson Annual 10-K at 10-11. Dobson also has a nationwide GSM/GPRS roaming agreement with T-Mobile that will expire in 2006. News Release, "Dobson Communications and T-Mobile, USA Inc. Sign Nationwide GSM/GPRS Roaming Agreement" (rel. Aug. 20, 2003) (found at [www.dobson.net](http://www.dobson.net)); *see also* Arctic Slope Comments at 3 (noting a roaming agreement with Dobson); Great Lakes Comments at 3 (noting a roaming agreement with Dobson).

same roaming technologies or the same coverage area as Dobson,<sup>21</sup> there is no basis to claim anti-competitive behavior or unreasonably discriminatory behavior.<sup>22</sup>

The Commission has consistently and appropriately treated automatic roaming arrangements as a matter of contract between carriers, and not a common carrier service by itself. Carriers must continue to be free to negotiate between and among themselves the rates they will charge to another carrier for the privilege of allowing the “foreign” carrier’s subscribers to use the “home” carrier’s spectrum and infrastructure. The process encourages local system improvement and innovation; the Rural Commenter’s insistence on government intervention to allow them to charge more -- and provide less -- is simply inconsistent with the public interest. The Commission has previously stated that it is against the adoption of automatic roaming “unless it is clear that providers’ current practices are unreasonably hindering the operation of the market to the detriment of consumers,” which is clearly not occurring here.<sup>23</sup>

Mid-Tex suggests that Dobson, which serves 1.6 million subscribers in sixteen states, is “almost” a nationwide carrier with market power.<sup>24</sup> Dobson faces competition from national, other regional and smaller carriers in every market in which it operates and has none of the attributes associated with market power, such as the ability to raise prices above competitive

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<sup>21</sup> For example, Arctic Slope and Mid-Tex only provide AMPS and AMPS/TDMA/GSM service, respectively, in one portion of one Rural Service Area while Dobson provides GSM/GPRS/EDGE capabilities throughout its networks that encompass portions of sixteen states.

<sup>22</sup> Section 202(a) makes it unlawful “for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities or services for or in connection with like communication service . . . .” 47 U.S.C. § 202(a). To establish a *prima facie* Section 202(a) claim, the claimant must show that a common carrier is offering “like” services to similarly situated consumers at disparate prices. See *Metrocall, Inc. v. WorldCom, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 10826, 10830 (EB 2000).

<sup>23</sup> *Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services*, WT Docket No. 00-93, Notice of Proposed Rulemaking, 15 FCC Rcd 21628, 21635 (2000).

<sup>24</sup> Mid-Tex Comments at 3 n.2 and accompanying text.

levels.<sup>25</sup> Quite the contrary, the spectrum holdings of nationwide carriers in rural areas, combined with nationwide advertising campaigns, act to constrain Dobson's prices at competitive rates even though a national carrier may not actually provide facilities-based service in the rural area. Rural carriers, including Dobson, recognize that if above-market rates are charged then national carriers have the ability through their spectrum holdings to enter the market at any time.

Competition drives down roaming rates towards cost<sup>26</sup> resulting in cost savings that are passed on to all consumers in lower rates for service. Competition for roaming may force carriers to adapt to the changing market pressures. As the Commission has repeatedly emphasized, its role "is not to pick winners and losers, or to select the best technology to meet consumer demand," but instead "to rely as much as possible on free markets and private enterprise."<sup>27</sup>

Ultimately, the Rural Commenters are suggesting that they need high rate roaming revenues in order to cross-subsidize the provision of local service in high-cost rural areas.<sup>28</sup> The Commission, however, already has an explicit support mechanism to accomplish this objective, *i.e.*, the Universal Service Fund ("USF"). If the Commission is concerned for the development of wireless services in high-cost rural areas, the Commission should facilitate wireless carriers' access to universal service funding by assuring that the Eligible Telecommunications Carriers ("ETC") process for wireless carriers is streamlined.

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<sup>25</sup> See *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation For Consent to Transfer Control of Licenses and Authorizations File Nos. 0001656065, et al.*, 19 FCC Rcd 21522, 21556 (2004).

<sup>26</sup> See Leaco Comments at 5; PSComm Comments at 7; Great Lakes Comments at 5.

<sup>27</sup> *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Docket No. 98-146, Report, 14 FCC Rcd 2398, 2402 (1999).

<sup>28</sup> See Arctic Slope Comments at 4; Great Lakes Comments at 4; Leaco Comments at 4; Mid-Tex Comments at 3.

#### **IV. The Existence Of Effective Competition Is The Real Source Of The Rural Commenters' Complaint About The Analog Transition.**

The Rural Commenters generally complain that the phasing out of analog technology in neighboring markets, thus further diminishing the potential for their customers to roam outside their market borders, is harming their ability to compete within their markets. Arctic Slope specifically claims that Dobson's analog service in neighboring markets is insufficient to meet Arctic Slope's roaming needs.<sup>29</sup> The Rural Commenters argument, boiled to its essentials, is that the small carriers' inability or refusal to upgrade their networks to offer state-of-the-art services is harming their ability to obtain roaming traffic in the market and to sell their subscribers regional and national rate plans that can compete with those larger competitors in their markets who offer digital services on a regional or national scale. Some Rural Commenters even criticize those national carriers who are willing to disaggregate spectrum and partition markets to smaller carriers in return for a commitment on the rural carrier's part to implement advanced technologies that are compatible with the nationwide carrier's roaming network. The Commission must reject all such claims.

Clearly, the problem facing the Rural Commenters is not a lack of competition, but rather their failure to respond effectively to the competitive landscape that demands capital investment to upgrade networks to state-of-the-art technologies. Although the Rural Commenters claim that analog allows them to provide quality service to rural areas, in reality, it is the competitive pressure from rural carriers like Dobson that are willing to make the investment and achieve higher subscriber penetration that these carriers prefer not to face. There is no question that analog services are inferior to the vast array of offerings (data, video and voice) that can be provided using a digital network.

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<sup>29</sup> See Arctic Slope Comments at 8.

Moreover, while the Rural Commenters state that the sunset of analog is making them less competitive because they cannot offer quality analog roaming outside their markets, just the opposite is true. It must be emphasized that, contrary to Arctic Slope's insinuations, Dobson's cellular networks continue to support analog technology in compliance with Section 22.901 of the Commission's rules, even though the dedication of capacity to outdated analog service ("AMPS") technology adversely affects Dobson's ability to provide advanced wireless services to rural America.<sup>30</sup> Even more frustrating to Dobson is that a PCS provider that is not subject to the added cost of an AMPS requirement has a competitive advantage over Dobson when it comes to serving rural consumers.

It has been Dobson's experience that rural consumers demand the same services that are advertised by the national carriers at prices comparable to those being offered to their urban counterparts. For this reason, Dobson has invested in its networks to support GSM/GPRS/EDGE technology and added sites to bolster coverage quality. Carriers that are unwilling or unable to adapt to the changing marketplace can hardly cry foul when consumers favor the choices that digital technology provides. And the Commission would be doing a disservice to the growth of competition in rural markets by forcing cellular carriers to maintain or even expand their analog capacity to satisfy the needs of "roaming" traffic from subscribers of rural carriers who are only offering older, less efficient analog services. It defies logic to discourage innovation and product development by adding to the already burdensome analog obligations of the cellular carriers who are spending substantial amounts of capital to upgrade their rural services offerings.

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<sup>30</sup> 47 C.F.R. § 22.901. The analog service requirement has at times impeded Dobson's ability to expand its cellular networks into isolated rural areas that are unserved. In certain sparsely populated areas, Dobson simply cannot justify the costs of supporting GSM/GPRS/EDGE and AMPS. As acknowledged by the Commission when phasing out the AMPS requirement, "it imposes costs and impedes spectral efficiency." *Year 2000 Biennial Regulatory Review -- Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and other Commercial Mobile Radio Services*, WT Docket No. 01-108, *Report and Order*, 17 FCC Rcd 18401, 18406 (2002).

**V. Contrary To The Claims Of Some Rural Commenters, A “Keep What You Use” Licensing Policy Would Have Significant Adverse Consequences For The CMRS Industry.**

Several of the Rural Commenters urge adoption of a “keep what you use” licensing policy.<sup>31</sup> As stated previously, these arguments are being considered in a pending rulemaking proceeding and are not appropriately addressed here. Nonetheless, Dobson reiterates for the record its opposition to the adoption in the CMRS environment of a “keep what you use” licensing policy.<sup>32</sup>

An integral part of Dobson’s business strategy is to build out its network to sparsely populated areas. Dobson provides coverage to more than 98 percent of its population in its licensed areas. Given the lower population densities in many rural areas, however, the Commission must recognize that the economics of a given area may not support more than two or three facilities-based providers of the types of wireless service offerings that Dobson provides today. Application of a spectrum take-back policy in such circumstances will not change these marketplace economics; such a policy may, however, lead to uneconomic *current* construction of network facilities by licensees with legitimate *future* build-out interests, just to “save the license” now rather than deploying facilities according to sound and timely business practices.

Instead of creating viable new competition for rural consumers, such forced construction threatens to create market failure in these rural areas by introducing uneconomic competition into the marketplace.<sup>33</sup> Moreover, requiring licensees to allocate scarce capital and other

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<sup>31</sup> See Great Lakes Comments at 4-5; Leaco Comments at 4-5; Mid-Tex Comments at 3-4; NTCA Comments at 4-5; PSComm Comments at 6.

<sup>32</sup> See Comments of Dobson Communications Corporation, WT Docket No. 02-381 (filed Jan. 14, 2005); Reply Comments of Dobson Communications Corporation, WT Docket No. 02-381 (filed Feb. 14, 2005).

<sup>33</sup> Ironically, premature build-out by the national and regional carriers will also eliminate these carriers’ interest in utilizing the smaller, local rural carriers’ networks for roaming services to their subscribers. If forced to build in rural areas to preserve their licensed areas, the national carriers’ own networks will achieve coverage for which they now depend on rural and regional carriers’ facilities.

resources to avoid a spectrum take-back necessarily detracts from their ability to satisfy consumer demands in other parts of their license areas. As a result, neither rural consumers nor consumers generally would obtain real benefits, a step backwards for the CMRS industry.

## **CONCLUSION**

CTIA –The Wireless Association has properly recognized that wireless telecommunications capital spending continues to increase, subscriber growth continues at a strong pace, and new services and features continue to be introduced in urban, suburban and rural markets at an incredible pace. While there are some markets where the subscriber density will not, without federal or state assistance, justify capital expansion, the Commission has in place USF and ETC programs that should, appropriately implemented, allow even these high cost areas to receive the benefits of the highly competitive market that exists in the CMRS industry. The protestations of some carriers who are unwilling to invest in advancing technology but want to maintain their competitive position does not speak to the lack of competition, and suggestions that regulatory solutions are necessary to protect such carriers must be rejected. To the contrary, Dobson urges the Commission to reaffirm its prior findings that effective CMRS competition exists in rural areas.

Respectfully submitted,

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April 12, 2005



### **CERTIFICATE OF SERVICE**

I, Ernestine M. Screven, do hereby certify that on this 12<sup>th</sup> day of April, 2005, a copy of the foregoing "Reply Comments of Dobson Communications Corporation" were served via U.S. mail, first-class postage prepaid to the following:

Heidi Kroll  
Spectrum Competition & Policy Division  
Federal Communications Commission  
Wireless Telecommunications Bureau  
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